Hue Chooi Yin v Chew Pit King

HIGH COURT (KUALA LUMPUR) — DIVORCE PETITION NO S8–33–691 OF 2002
FAIZA TAMBY CHIK J
3 FEBRUARY 2005

Civil Procedure — Declaration — Application for — Disposal of case on point of law — Petitioner's application for a declaration was to establish petitioner's status — Whether respondent complied with pre-requirements of O 14A Rules of High Court 1980 — Whether application under O 14A Rules of High Court 1980 highly prejudicial to petitioner — Whether respondent estopped from making application — Rules of High Court 1980 O 14A

The petitioner's petition was for a declaration to establish her status for all intents and purposes that the late Chew Choon Ming married the petitioner, Madam Hue Choon on 5 May 1979 and they lived together for more than 22 years and she bore him two children. When the petitioner married the late Chew Choon Ming, the respondent was below the age of seven years. The late Chew Choon Ming before the marriage, represented to the petitioner that he had severed his relationship for good with his first wife and he had nothing to do with her and he was living separately for quite some time. This the petitioner understood to be that her late husband Chew Choon Ming was divorced and was free to contract a marriage with her. Accordingly, the petitioner trusted and completely relied on the late Chew Choon Ming and she agreed to marry him with the consent of her mother and her family. The petitioner and the late Chew Choon Ming were married according to Chinese customary rites. The late Chew Choon Ming was the founder and leader of a spiritual movement, then called BAITIANGONG Universal Spiritual Movement which attracted a large number of followers because of his teachings. The respondent applied for an application under O 14A of the Rules of High Court 1980 ('the RHC') on a point of law to dispose off the matter summarily without proceeding to the full trial and documentary evidence as well as witnesses.

Held:

(1) The respondent had not complied with the pre-requirements as the parties did not consent to an order/judgment on such determination. The respondent applied for an application under O 14A of the RHC on a point of law to dispose off the matter summarily without proceeding to the full trial and documentary evidence despite knowing fully well the facts in the case were seriously in dispute. Therefore, the application under O 14A of the RHC was highly prejudicial to the petitioner (see para 8).

A (2) For the purpose of O 14A of the RHC proceedings, since by its nature the application would decide the rights of the parties and would terminate the action of finally disposing off it, therefore, the affidavits for use in the proceedings may depose only to such facts as the deponent and in this case the respondent was able of his own knowledge be able to prove. Further affidavits may contain only such facts as were within the personal knowledge of the deponent/respondent. In the instant case, the respondent nor his agent would be able to claim any personal knowledge of the marriage between the petitioner and late Chew Choon Ming on 5 May 1979. Therefore, the respondent's as well as his agent's affidavits were based on hearsay evidence, therefore inadmissible (see para 9).

C (3) The petitioner in this case could rely on the doctrine of estoppel to rescue her from the unfortunate predicament she had been put by both her husband, the late Chew Choon Ming and the respondent whose ill motive was merely to throw her out of her matrimonial home together with her two young school-going fatherless children. Therefore neither the respondent nor his agent was entitled to challenge the status of the petitioner who totally relied and was made to believe by the late Chew Choon Ming that she was his legally married wife. The respondent was estopped to raise the issue now (see para 21).

[Bahasa Malaysia summary

E

Petisyen pempetisyen adalah untuk satu deklarasi untuk menentukan statusnya untuk semua niat dan tujuan bahawa mendiang Chew Choon Ming telah berkahwin dengan pempetisyen, Madam Hue Choon pada 5 Mei 1979 dam mereka telah tinggal bersama lebih 22 tahun dan beliau telah mengandungkan dua anaknya. Apabila pempetisyen berkahwin dengan mendiang Chew Choon Ming, responden berumur bawah tujuh tahun. Mendiang Chew Choon Ming sebelum perkahwinan itu, telah menunjukkan kepada pempetisyen bahawa beliau telah memutuskan hubungannya dengan isteri pertamanya dan beliau tiada kaitan langsung dengannya dan beliau tinggal berasingan untuk beberapa ketika. Pempetisyen dengan itu memahami bahawa mendiang suaminya Chew Choon Ming telah bercerai dan bebas daripada kontrak perkahwinan dengannya. Oleh itu pempetisyen mempercayai dan bergantung sepenuhnya kepada mendiang Chew Choon Ming dan bersetuju untuk berkahwin dengannya dengan persetujuan ibu dan keluarganya. Pempetisyen dan mendiang Chew Choon Ming telah berkahwin menurut adat resam Cina. Mendiang Chew Choon Ming adalah pengasas dan ketua gerakan rohaniah, yang pada ketika itu dikenali sebagai BAITIANGONG Universal Spiritual Movement yang menarik ramai pengikut oleh sebab ajarannya. Responden telah memohon untuk satu permohonan di bawah A 14A Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') dari aspek undang-undang untuk menyelesaikan perkara ini dengan terus tanpa prosiding ke perbicaraan penuh dan keterangan dokumentar juga saksi-saksi.

I

Diputuskan:

(1) Responden tidak mematuhi pra syarat tersebut kerana pihak-pihak tidak bersetuju dengan perintah/penghakiman berhubung penentuan sedemikian.

Responden memohon untuk satu permohonan di bawah A 14A KMT dari segi undang-undang untuk menyelesaikan perkara tersebut dengan terus tanpa prosiding perbicaraan penuh dan keterangan dokumentar meskipun mengetahui fakta dalam kes tersebut telah dipertikaikan. Oleh itu, permohonan di bawah A 14A KMT amat prejudis terhadap pempetisyen (lihat perenggan 8).

(2) Bagi tujuan prosiding A 14A KMT, memandangkan menurut sifatnya permohonan itu akan memutuskan hak-hak pihak-pihak tersebut dan akan membatalkan tindakan menyelesaikannya, oleh itu afidavit untuk kegunaan dalam prosiding boleh dideposkan hanya berkaitan fakta yang deponen dan dalam kes ini responden dapat dalam pengetahuannya sendiri buktikan. Tambahan pula afidavit tersebut hanya mengandungi fakta tersebut yang dalam pengetahuan peribadi deponen/responden. Dalam kes semasa, responden maupun ejennya tidak boleh menunjukkan apa-apa pengetahuan peribadi tentang perkahwinan antara pempetisyen dan mendiang Chew Choon Ming pada 5 Mei 1979. Oleh itu, afidavit-afidavit responden dan juga ejennya adalah berdasarkan keterangan dengar cakap dan tidak boleh diterima (lihat perenggan 9).

(3) Pempetisyen dalam kes ini boleh bergantung kepada doktrin estopel untuk menyelamatkan dirinya daripada nasib malang yang beliau berada disebabkan oleh kedua-dua suami, mendiang Chew Choon Ming dan responden yang mana niat jahat mereka untuk menyingkirnya daripada rumah perkahwinan bersama dua orang anak kecilnya yang masih bersekolah dan tiada bapa. Oleh itu responden maupun ejennya tidak berhak mencabar status pempetisyen yang bergantung sepenuhnya dan dibawa untuk mempercayai oleh mendiang Chew Choon Ming bahawa beliaulah isteri sah yang dikahwininya. Responden diestopkan daripada menimbulkan persoalan itu sekarang (lihat perenggan 21).]

Notes

For cases on application for a declaration, see 2 *Mallal's Digest* (4th Ed) Consolidated Subject Index paras 2052–2072.

Cases referred to

Bank of India v Murjani Marketing 1 March 1991, CA transcrip 91/0304 (refd)

Boustead Trading (1985) Sdn. Bhd v Arab Malaysian Merchant Bank Bhd [1995] 3 MLJ 331 (refd)

Chua Mui Nee v Palaniappan [1967] 1 MLJ. 270 (refd)

Kassim bin & Anor v Guthrie Estates Holdings Ltd & Ors [1993] 3 MLJ 303 (refd)

Korso Finance Establishment Anstall v John Wedge (unreported, 15 February, 1994, CA Transcript No 94/387) (refd)

Leong Wee Shing v Chai Siew Yin [2000] 5 MLJ 162 (refd)

Rossage v Rossage [1960] 1 All ER 600 (refd)

Sumner v William Henderson & Sons [1963] 1 WLR 823 (refd)

Teh Poh Wah v Seremban Securities Sdn Bhd [1996] 1 MLJ 701 (refd)

UMW Toyota (M) Sdn Bhd v Chow Weng Thiem [1996] 5 MLJ 678 (refd)

Legislation referred to

Civil Marriage Ordinance
Evidence Act 1950 s 32(e)
Law Reform (Marriage and Divorce) Act 1976 s 34
Rules of the High Court 1980 O 14A
Supreme Court Practice 1999 O 14A

K Saraswathy (CK Devan with her) (Devan Hussin) for the petitioner.
WH Tan (SK Soh with him) (Azam Malek & Soh) for the respondent.

Faiza Tamby Chik J:

[1] Order 14A of the Rules of the High Court 1980 is a new amendment which came into force as at 22 September 2000. To have a clear understanding of O 14A, it is instructive to refer to O 14A of the Supreme Court Practice 1999 which clearly lays down the intent and purpose of O 14A. Order 14A in the United Kingdom was introduced in the year 1990. For O 14A of the Rules of the High Court 1980 as far as I am made to aware, there seem to be no decided cases in Malaysia and the respondent too has not quoted any decided case on the said order. However, there are a number of decided cases in the United Kingdom on O 14A and some of them have appealed to the English Court of Appeal and also have finally reached the House of Lords. In the English Court of Appeal decision, basic principles have been laid down to be adopted in deciding O 14A applications. Sir Thomas Bingham MR in the Court of Appeal case of *Korso Finance Establishment Anstall v John Wedge* (unreported, 15 February, 1994, CA Transcript No 94/387), considering the inter-relation of striking out and O 14A expressed unease at 'deciding questions of legal principle without knowing the full facts'. Further it is also instructive to note the proposition enunciated by the English Court of Appeal in*Sumner v William Henderson & Sons* [1963] 1 WLR 823 which stated amongst others that '… it should be remembered that among the facts which are to be treated as proved or admitted, there must be no hypothetical or future facts'. It was further stated in *Bank of India v Murjani Marketing* 1 March 1991, CA transcrip 91/0304 by Taylor LJ, 'where the issues of fact are interwoven with the legal issues raised it would be undesirable for the court to split the legal and factual determination, for to do so would in effect be to give legal findings in vacuo or on a hypothetical ruling, which the court will not do'.

[2] In the instant case, the facts are not only in serious dispute but also the respondent has not disclosed any personal knowledge on the fact. Moreover, the facts are interwoven with legal issues and therefore the court should not decide the instant case summarily on a question of law which will bring great injustice to the petitioner. Order 14A/2/8 of the Rules of the Supreme Court Practice further provides:

> This order should be read with O 14 (summary judgment), as well as O 18 r 19 (striking out pleading and endorsements) and O 33 r 3 (time etc of the trial of questions or issues and O 33 r 7 (dismissal of action after decision of the preliminary issues)…. Further this order empowers the court to make a final determination of a question of law without the need of the prior order of the court under O 33 rr 3 and 4(2) for the determination of a preliminary question of law whether raised on the pleadings under O 18 r 11 or otherwise.

This order provides an alternative procedure to that provided by O 5 r 4 by way of the originating summons for the construction of the document or some other question of law.

[3] Order 14A/2/3 provides amongst others the requirements for employing the procedure under this order as follows:

(a) the defendant must give notice of intention to defend;

(b) the question of law or construction is suitable for determination without a full trial of the action;

(c) such determination will be final as to the entire course or matter or any claim or issue therein.

[4] In the instant case before me, there are facts seriously in dispute, therefore this matter is not suitable to be determined under O 14A. Further, there are serious facts in dispute, in that:

(i) The petitioner states that there was a marriage between the petitioner and the late Chew Choon Ming on 5 May 1979 whereas the respondent vehemently denies the same (see para 16 (r) 43);

(ii) The petitioner states that she lived together with her husband, the late Chew Choon Ming from 5 May 1979 until his death on 5 June 2000 and this is also disputed by the respondent (see paras 16(r) encls 43 and 11 (amended Petition) paras 3, 6(f), (g), (k), (n), (r), (e) and the photographs exhibited therein);

(iii) The petitioner clearly averred that she was made to believe by the late Chew Choon Ming that he had severed his relationship with his first wife for good and that only upon his continued representations and his constant assurances the petitioner with her mother's and elder sister's consent agreed to marry him and subsequently by marrying him the petitioner altered her position and lived with him for more than 22 years and followed him in all his preaching campaigns and later she bore him two children. (see the birth certificates of the two children, Chew Mei Chun now 15 years old and Chew Pit Tian now 11 years old, encls 43, para 16 (r), encl 60 para 33, exh C, encl 11 paras 6(h), (i);

(iv) On the other hand, the respondent denies the above facts except that the petitioner bore the late Chew Choon Ming's two children and they lived together at 202, Jalan G1, Taman Melawati, 53100 Kuala Lumpur from 1990 to 2000 which is not true;

(v) The children's birth certificates show clearly that the father is Chew Choon Ming and the mother is Hue Chooi Yin;

(vi) The respondent called the petitioner 'Mummy' or 'Mom' as shown in the cards sent to the petitioner by the respondent in his own handwriting and the petitioner treated him as her own son before and after the death of the late Chew Choon Ming. In fact, the apology card dated 4 September 2000 was sent by the respondent in his own handwriting to the petitioner after he had admitted that he had forged the signature of the late Chew Choon Ming on 5 June 2000 and 6 June 2000 and fraudulently transferred the majority (98%)

A shares in the holding company and 50% shares in another company held by the late Chew Choon Ming into the name of the respondent. And now the respondent is deliberately denying the same (see encl 43 para 16(k));

(vii) The respondent by invoking O 14A at this stage is not acting in good faith.

B **[5]** The parties had an opportunity of being heard on the question of law or have consented to an order or judgment being made on such determination. In this case there was no such consent between the parties for the question of law to be determined under O 14A. Further, O 14A/2/8 provides that '…. The affidavits for use in proceedings under O 14A may depose only to such facts as the deponent is C able on his own knowledge to prove.' In the instant case, I think the respondent certainly cannot claim to have any personal knowledge of the facts in issue. He has deposed facts he is unable to prove:

(i) He has no personal knowledge whatsoever of the marriage between the D petitioner and the late Chew Choon Ming;

(ii) The respondent is using his agent Chan Yen Peng to produce documents in support of his contention (see encl 35 paras 7 and 8);

(iii) The respondent has no personal knowledge or refuses to admit that the late E Chew Choon Ming and his first wife were separated and that she locked him from his own house. The respondent does not have personal knowledge of the relevant facts of the Petition and therefore his allegations against the petitioner are based on pure surmise, therefore is hearsay and worthless as evidence;

(iv) This lack of personal knowledge alone disentitles the respondent to employ the F procedure under O 14A of the Rules of the High Court 1980 in the instant case;

(v) On the other hand, the petitioner has personal knowledge of her relationship with her late husband Chew Choon Ming and also all the representations and statements he made while he was alive which will satisfy the provisions of G s 32(e) of the Evidence Act 1950;

(vi) The respondent lived with the petitioner and the late Chew Choon Ming and she looked after him as her son.

H **[6]** Again the respondent has affirmed his affidavit without disclosing the source (see encl 57, p 3 BM para 65, page 6 para 13), therefore as the deponent has produced hearsay evidence without disclosing the source of his information the court is entitled to strike out the whole of the respondent's affidavit, ie encl 57. In the case of *Kassim bin & Anor v Guthrie Estates Holdings Ltd & Ors* [1993] 3 MLJ 303 at pp 307–308. At p 309C, the court whilst deliberating on the case stated amongst I others:

> In my opinion, when the deponent said in para 18 that he was 'advised and verily believed' he had not disclosed the source of his information or the persons who advised him and therefore the averment in para 18 is bad.

[7] The Court in quoting the principles enunciated in the case of *Rossage v Rossage* [1960] 1 All ER 600 with approval stated:

> … the English Court of Appeal decided that where the proceedings sere not interlocutory (which is very pertinent in our case) hearsay evidence was inadmissable and irrelevant. In the present case the proceedings are not interlocutory but a final matter and hearsay evidence is therefore inadmissible.

[8] In this case before me, the respondent has not complied with the pre-requirements as the parties did not consent to an order/judgment on such determination as stated hereinbefore. Moreover, it is also clearly further provided that, 'the application may be made at any time after the defendant has given notice of intention to defend and before the full trial of the action has begun'. It is observed that in the instant case the petition was filed and served on the respondent in Singapore in August 2002 after much effort. He did not reply within the time provided for but only did so in October 2002 after the amended petition was served on his solicitors. In accordance with the direction of this court, the petitioner's own witness statements as well as other ten witnesses' statements by affidavit evidence were filed in court on 7 April 2003 and the same were served on the respondent's solicitors on the same day. The petitioner's petition was scheduled for hearing on 14 April 003. Witnesses' statements and bundles of documents were all filed on 7 April 2003. The respondent is fully aware of the petitioner's case. Although the court had adjourned the hearing to 28 April 2003, the respondent until to date has not filed his witnesses' statements. As the hearing of the petitioner's petition is imminent and the respondent despite being fully aware of the same, applied for an application under O 14A on a point of law to dispose off the matter summarily without proceeding to the full trial and documentary evidence as well as witnesses knowing fully well the facts in the case are seriously in dispute. Therefore, the application under O 14A is highly prejudicial to the petitioner. In this case the respondent filed the reply to the petition in October 2002 and only after the receipt of the petitioner's witnesses' statements and after the date of trial was fixed and the case came up for hearing of the trial on 24 April 2003, the respondent's solicitors served the petitioner's solicitors the sealed application under Order 14A on 17 April 2003 at 3.10pm. This is contrary to the provision of the said order (see encl 43 paras 13, 14 and 15). Further, the respondent's solicitors failed to serve an advance copy of the said application although the said application was filed in Court on 15 April 2003, immediately after the hearing date on 14 April 2003. This certainly is not done in good faith because the respondent has the added advantage over the petitioner's case for having received the petitioner's witnesses' statements and all other documents on 7 April 2003 by the respondent's solicitors.

[9] For the purpose of O 14A proceedings, since by its nature the application will decide the rights of the parties and will terminate the action of finally disposing off it, therefore, the affidavits for use in the proceedings may depose only to such facts as the deponent and in this case the respondent is able of his own knowledge be able to prove. Further affidavits may contain only such facts as are within the personal knowledge of the deponent/respondent. In the instant case, the respondent nor his agent (Chan Yen Peng who is not a party to the petition but filed an affidavit) certainly will not be able to claim any personal knowledge of the marriage between

the petitioner and her husband on 5 May 1979. Further as the respondent was below seven years of age and the stranger deponent Chan Yen Peng though was 11 years old she had no connection whatsoever with the petitioner nor her husband. Therefore, the respondent's as well as his agent's affidavits are based on hearsay evidence, therefore inadmissible (see para 16(o) of encl 43). The petitioner has information that the respondent by himself, his agents and servants are spreading information with regard to the petitioner's case as they are in possession of the petitioner's witnesses' statements and other documents since 7 April 2003 and have endeavoured to induce assault/battery and injure the petitioner's witness and her family members and police reports have been made in respect of the same.

[10] It is seen here that the petitioner's petition is for declaration to establish her status for all intents and purposes that the late Chew Choon Ming married the petitioner, Madam Hue Choon in on 5 May 1979 and they lived together for more than 22 years and she bore him two children as stated hereinbefore. When the petitioner married the late Chew Choon Ming on 5 May 1979, the respondent was below the age of 7 years. The petitioner's husband, the late Chew Choon Ming before the marriage, represented to the petitioner that he had severed his relationship for good with this first wife and he had nothing to do with her and he was living separately for quite some time as his first wife locked him out and even changed all the locks to the house which the late Chew Choon Ming is the registered owner of the premises. This the petitioner understood to be that her late husband Chew Choon Ming was divorced and was free to contract a marriage with her. It is seen here that there are witnesses who have personal knowledge of the above and are willing to testify in Court and the witnesses' statements have been filed in court. The petitioner was made to believe and continued to believe that the deceased Mr Chew Choon Ming had separated from his first wife for good and he continued to represent to her that he had nothing to do with his first wife. The late Chew Choon Ming also represented to the petitioner that he was free to marry her. To this the petitioner and her family genuinely relied on his representations and continued representations and believed that the late Chew Choon Ming had in fact 'divorced' his first wife and that the late Chew Choon Ming has the capacity to marry the petitioner. Accordingly the petitioner trusted and completely relied on the late Chew Choon Ming and she agreed to marry him with the consent of her mother and her family. On 5 May 1979, the petitioner Madam Hue Chooi Yin and the late Chew Choon Ming were married according to Chinese customary rites. Then, his representation continued until the late Chew Choon Ming died. Based on the representation by the late Chew Choon Ming who had convinced the petitioner, Madam Hue Chooi Yin that he had separated from his first wife, the deceased Soo and based on such belief only she had agreed to marry the late Chew Choon Ming as stated hereinbefore. The late Chew Choon Ming also represented and assured the petitioner's mother and family that he was free to marry the petitioner and would take good care of her. The late Chew Choon Ming was the founder and leader of a spiritual movement, then called BAITIANGONG Universal Spiritual Movement which attracted a large number of followers because of his teachings. This convinced the petitioner and her family that the late Chew Choon Ming was a reliable and honourable person. On 5 May 1979, the petitioner was just over 18 years when she married the late Chew Choon Ming who was very much older to her and was not a youth nor a man with any financial muscle other than having a monthly income of about RM800 as a school teacher.

In other words, the petitioner did not marry a man of wealth nor youth. Before the petitioner's marriage to the late Chew Choon Ming, the petitioner met Chew Choon Ming's first wife who personally also informed the petitioner that she had nothing to do with the late Chew Choon Ming and they had no relationship and the petitioner was free to marry Chew Choon Ming. This had in fact reinforced the petitioner's belief that the late Chew Choon Ming had actually divorced his first wife.

[11] There were continued representations and assurances by the late Chew Choon Ming agreeing to marry the petitioner with the consent of her family on 5 May 1979. It is observed that the petitioner relied on the first wife's statement that they (the late Chew Choon Ming and his first wife) had divorced and that the petitioner and the late Chew Choon Ming were free to marry. The petitioner relied completely on the date Chew Choon Ming's representations so also her family, if not the petitioner would not have certainly married the late Chew Choon Ming. Furthermore, the petitioner also became a follower of the spiritual movement before she married Chew Choon Ming. After the marriage on 5 May 1979 in accordance with Chinese customary rites at Ipoh, Perak, the petitioner lived with her husband Chew Choon Ming until he died on 5 June 2000. From the date of the petitioner's marriage to Chew Choon Ming and during the lifetime of Chew Choon Ming, he always introduced the petitioner to the followers of the spiritual movement as well as his friends and associates, as his only wife. In the case of *Chua Mui Nee v Palaniappan* [1967] 1 MLJ. 270, FC wherein Barakbah LP upon deciding that there was a valid marriage and it would be against these principles to regard the children of the deceased as illegitimate children quoted with approval at p 272 Lord Oaksey in *Isaac Penhas v Tan Soo Eng*, 'Abraham Penhas was dead and in such circumstances it would, in their Lordships' opinion, be altogether wrong to invalidate a marriage so solemnised followed as it was by years of cohabitation as man and wife and to bastardize the two children of the marriage, even if the other evidence were equivocal as to the status intended.' In similar vein, I think the petitioner and her late husband had cohabited for more than 22 years and have two children by the marriage. The late Mr Chew Choon Ming took the petitioner everywhere he went and introduced her as his only wife which is self explanatory of the petitioner's close relationship with her late husband Chew Choon Ming and their interaction as husband and wife and intermingling with others are evident from photographs exhibited in the amended petition (see encl 11 exhs 'A', 'D', 'I', 'J', 'K', 'N' and 'P' and the VCD filed in court as part of the petitioner's Bundle of Documents). The respondent lived with the petitioner and her husband the late Chew Choon Ming from the time the respondent was 11–12 years old until he was 19 years of age and completed his secondary education. This the respondent failed to disclose and/or withheld his vital information from this court (see encl 60 para 15(ii), encl 11 paras (p), (q) and the exhibits therein). The respondent is now more than 31 years of age and he has never challenged the status of the petitioner nor shown any disrespect towards the petitioner until the end of September 2000. The respondent, Chew Pit King not only accepted the petitioner, Madam Hue Chooi Yin as his mother but he also introduced her as his mother. The respondent, that is Chew Pit King was less than seven years old during the time when the petitioner married the late Mr Chew Choon Ming. The respondent lived together with them, in a rented house until he attained the age of 19 years old. After that, he went to Australia for flying lessons on the expenses of the family. During the period when the respondent was 11–2 years old, the petitioner

supported him by giving him pocket money, order for clothes at a tailor twice a month. Until after the death of the late Chew Choon Ming, the respondent still addressed the petitioner as 'Mummy' or 'Mom'. This is supported by the documentary evidence. People recognised her as Mrs. Chew Choon Ming and not one of the followers or outsiders including the respondent questioned the status of Madam Hue Chooi Yin nor the validity of her marriage to the late Mr Chew (see photograph of the Chinese New Year greeting card addressed to the petitioner as Mrs Chew Choon Ming by Ltd Col (R) Anthony J Silva of 'CASA ISABELLA' No 26, Jalan A8, Taman Melawati, 53100 Kuala Lumpur) (See Ikatan Dokumen Pempetisyen dated 7 April 2003 pages 73 and 74). On 1 December 1994, the late Chew Choon Ming in his own handwriting in the application for admission into primary school (Sekolah Sri Utama) in respect of his daughter Chew Mei Chun and son Che Pit Tian clearly stated with the particulars that Chew Choon Ming is the father and the petitioner Madam Hue Chooi Yin is the mother and the status as married. It is pertinent to point out that the respondent's mother Madam Soo Poi Eng was alive at that time. This clearly shows that the petitioner and her husband were married and also it is implied that the petitioner's husband the late Chew Choon Ming divorced his first wife he had the capacity to marry the petitioner on 5 May 1979 (see encl 60 exh 'D'). Further on 29 June 1999, the petitioner's husband, the late Chew Choon Ming as Chairman and Managing Director, Baixian Group of Companies applied to the American Consular Office Kula Lumpur in respect of visa application for his son Chew Pit Tian and stated unequivocally that the petitioner Madam Hue Chooi is his spouse. On 24 July 1999, the late Mr. Chew Choon Ming, the husband of the petitioner filled up the application for membership card in respect of Melawati Recreation Berhad (Century Club) wherein he unequivocally declared that the petitioner Madam Hue Chooi Yin is his spouse and signed the same in his own writing (see encl 60 Exhibit 'D'). On 5 June 2000 on the date of the death of the late Chew Choon Ming, the respondent forged the late Chew Choon Ming's signature in order to have the majority (98%) shares in the holding company in the name of the late Chew Choon Ming fraudulently transferred into his own name (see encl 609 paras 53 s(i)–(ix)). The transfer forms 32A were subsequently sent for stamping by the company's secretary, Tan Siew Chuan on 7 June 000 and the transfer form in respect of the Holding Company was then registered with the then Registrar of Companies as if it was carried out on 1.6.2000. After which the company's secretary, Tan Siew Chuan collected the stamped transfer form and then sent to the company office (see to encl 60 paras 53 s(i) – (ix) (exh 'E').

[12] Chew Pit King represented and endeavoured to persuade the petitioner that he will support her and her two young children after the death of the late Chew Choon Ming if the petitioner transferred all her rights and interest as well as her minor children's rights and interest to the respondent Chew Pit King. The petitioner refused vehemently to the same. However, the respondent Chew Pit King who took over full control of all the company's assets, has stopped the family allowance, sacked the servant or maid and has made and continues to make the petitioner and her two young children suffer immensely. Further he has also failed to provide the children's school fees which was given by the late Chew Choon Ming during his lifetime. It is asserted here that the respondent Chew Pit King after the death of the late Chew Choon Ming had proposed to the petitioner to marry him and adopt her children as his stepchildren so that they could received perks from his employer, Singapore

Airlines. To this the petitioner vehemently refused with disgust. If this is true it is certainly unheard of in our Asian society that a character as the respondent Chew Pit King to propose in marriage to his own stepmother whom he addressed from the age of 11–12 until he was 28 in September 2000 as 'Mummy' or 'Mom' in order to devise full control of all the wealth held in the name of the petitioner's late husband Chew Choon Ming. The respondent according to the petitioner is totally dishonest, greedy and he is aiming at the wealth accumulated by the late Chew Choon Ming during his lifetime at the exclusion of his sister, the petitioner and her two young children (see encl 60 para 53). It is also pertinent to point out that the wealth accumulated is worth millions. It was accumulated as a direct consequence of labour and by the tireless work by the followers of the spiritual movement for the Baixian Group of Companies. It was also the declared intention of the petitioner's late husband Chew Choon Ming that the wealth so accumulated and registered in his own name be placed under a trust to be administered by loyal and able employees who facilitated for the accumulation of wealth (see encl 60 paras 53(f), (g), (h)). Equally it is the declared intention of the petitioner under oath in Court documents that she is also committed to create a trust and place the same to be administered by trustees in accordance to the wishes of her husband the late Chew Choon Ming.

[13] I think the doctrine of estoppel is most pertinent and relevant to the petitioner's case herein. In a book entitled *Evidence Practice and Procedure* (2nd Ed) by Augustine Paul at p 805, the writer clearly defines estoppel as follows:

> When one person has by his declaration, act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, otherwise than but for that belief he would have acted, neither he nor his representative in interest shall be allowed in any suit or proceeding between himself and that person or his representative in interest to deny the truth of that thing.

[14] The writer goes on to quote Lord Denning in his book, *The Discipline of the Law*:

> Estoppel is not a rule of evidence. It is not a cause of action. It is a principle of justice and of equity. It comes to this: when a man, by his words or conduct, has led another to believe in a particular state of affairs, he will not be allowed to go back on it when it would be unjust or inequitable for him to do so.

[15] I am of the opinion that the above principle is very cogent and pertinent in the case of the petitioner herein who was totally made to believe by the late Chew Choon Ming that he had severed his relationship with his first wife for good (the petitioner and her family genuinely believed that the late Chew Choon Ming had divorced his first wife and had the capacity to contract the marriage with the petitioner) and proposed marriage to the petitioner thereby the petitioner altered her position from the age of over 18 years and became his wife and constant companion in all aspects of his life, cohabited with him until he died and bore him two children. And further helped to raise the respondent as her own son from the age of 11–12 years until he was 19 years. The principle of estoppel is further fortified by the case of *UMW Toyota (M) Sdn Bhd v Chow Weng Thiem* [1996] 5 MLJ 678 (HC) wherein at pp 685–686 Abdul Malik Ishak J enunciates the doctrine of estoppel as:

A The doctrine of estoppel has developed with rapid speed that it can now be used in almost any imaginable situation. Thus, the doctrine can even apply to a situation where the relationship giving rise to rights and correlative duties was non-contractual. Examples would be where it was meant to prevent the enforcement of a liability imposed by statute on a company director for signing a bill of exchange on which the company's name was not correctly given (see *Durham Fancy Goods Ltd v Michael Jackson (fancy Goods) Ltd* [1968] 2 B QB 839). It is appropriate to say that a statement may also prevent the representor from denying the existence of a statutory liability as reflected in *Robertson v Minister of Pensions* [1949] 1 KB 227; or to prevent a man from ejecting a woman, with whom he has been cohabitating from the family home (see *Maharaj v Chand* [1986] AC 898).

C **[16]** The case of *Boustead Trading* (1985) Sdn. Bhd v Arab Malaysian Merchant Bank Bhd [1995] 3 MLJ 331, FC widened the application of the doctrine of estoppel further when Gopal Sri Ram JCA, speaking for the Federal Court said at p 344:

The time has come for this court to recognise that the doctrine of estoppel is a flexible principle by which justice is done according to the circumstance of the case. It is a doctrine D of wide utility and has been resorted to in varying fact patterns to achieve justice. Indeed, the circumstances in which the doctrine may operate are endless.

[17] The Federal Court quoted with approval the principles enunciated by Edgar Joseph Jr J (as he then was):

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Edgar Joseph Jr J in an illuminating judgment in *Templeton v Low Yat Holdings Sdn Bhd* [1989] 2 MLJ 202, p 224 applied the doctrine in a broad and liberal fashion to prevent a defendant from relying upon the provisions of the Limitation Act 1953. The doctrine may be applied to enlarge or to reduce the rights or obligation of a party under contract.

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[18] In the instant case before me, the respondent is endeavouring or straining himself to rely on the provisions of the Civil Marriage Ordinance with a view to defeat the petitioner's rights to her marriage to her late husband Chew Choon Ming. In this respect, Gopal Sri Ram JCA said in *Teh Poh Wah v Seremban Securities Sdn Bhd* [1996] 1 MLJ 701at pp 706–707:

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In our judgment, this appeal may quite satisfactorily be resolved by reference to the doctrine of estoppel. It is a flexible doctrine by which courts seek to do essential justice between litigating parties.

H **[19]** Further, the Federal Court in the *Boustead Trading* case goes on to state that:

We would add that it is wrong to apply the maxim 'estoppel may be used as a shield but not a sword' as limiting the availability of the doctrine to defendants alone. Plaintiffs too may have recourse to it. The true nature of the doctrine in this context is that stated by Lord Russell of Killowen in *Dawsons Bank v Nippon Menkwa Kabushiki Kaisha* LR 62 IA 100 I at p 108:

Estoppel is not a cause of action. It may (if established) assist a plaintiff in enforcing a cause of action by preventing a defendant from denying the existence of some fact

essential to establish the cause of action, or (to put it in another way) by preventing a defendant from asserting the existence of some fact the existence of which would destroy the cause of action.

[20] I think it is also wrong to think that the doctrine is confined to cases where a representation of fact has been made or where a party has been encouraged by another to believe in the existence or in the non-existence of a fact. The decisions of the Privy Council in *Sarat Chunder Dey and the Calgary Miling Co* (among others) referred earlier concerned cases involving representations not of fact but of law.

[21] Based on the above principles enunciated by the courts on estoppel particularly the Federal Court of Malaysia in the decisions mentioned above, it is very clear that the petitioner in this case can certainly rely on the doctrine of estoppel to rescue her from the unfortunate predicament she has been put by both her husband the late Chew Choon Ming and the respondent whose ill motive is merely to throw her out of her matrimonial home together with her two young school-going fatherless children. Therefore neither the respondent nor his agent(s) is(are) entitled to challenge the status of the petitioner who totally relied and was made to believe by the late Chew Choon Ming that she was his legally married wife. Further, the petitioner's late husband's first wife who was a teacher during her life and until her death in March 1997 never challenged the marriage of the petitioner to the late Chew Choon Ming. This is also indicative that no one ever doubted the capacity of Chew Choon Ming including the respondent until September 2000. Therefore the respondent is estopped to raise the issue now. I think the petitioner's case herein falls squarely within the ambit of the principles enunciated in the abovementioned cases particularly in the Federal Court cases. It can be seen that the petitioner completely relied on the representation by the late Chew Choon Ming and she then, adjusted her position to her detriment and married him and lived with him for more than 22 years until the late Chew Choon Ming died on 5 June 2000. No one, even after the death of Chew Choon Ming ever challenged the status of the petitioner and the legality of her marriage status as invalid marriage until the respondent, Chew Pit King made disparaging remarks and made allegations against the petitioner. If any during the period of the life of the petitioner's husband, Chew Choon Ming challenged her marriage or her status the petitioner solemnly believes that he would have taken steps to rectify appropriately, incapacity, if any. At its worst after the death of the late Madam Soo Poi Eng the incapacity would have been cured and the petitioner's husband would have certainly registered the marriage between the petitioner and her late husband. The petitioner made a great sacrifice for not only to have married the late Chew Choon Ming but also she accompanied him everywhere and participated in the spiritual activities as a follower of the BAITIANGONG Universal Spiritual Movement. The respondent, Chew Pit King not only accepted the petitioner, Madam Hue Chooi Yin as his mother but he also introduced her as his mother. It is emphatically noted here that the respondent never ever questioned nor challenged the validity of the marriage, nor the position of the petitioner until the respondent reached the age of 31 years, and the petitioner thereby never ever doubted her position as married to the late Chew Choon Ming for more than 22 years of marriage

with him, thereby the respondent is estopped from challenging the status of the petitioner now. Further, the respondent by his conduct for more than 23 years recognised the petitioner as the wife of the late Chew Choon Ming and his mother, and the petitioner never thought that the respondent would ever challenge the petitioner's marriage nor her status as the wife of the late Chew Choon Ming and she believed and lived as the wife and widow of the late Chew Choon Ming (see encl 43 exh A).

[22] It is seen here that the respondent, who from the date of the death of the late Chew Choon Ming on 5 June 2000 forged the late Chew Choon Ming's signature and fraudulently transferred the majority shares in the Holding Company into his own name and took over fraudulently full control of the assets both movable and immovable (estimated to be worth millions of Ringgit Malaysia) of the late Chew Choon Ming as well, will stand to gain what truly do belong to him (see encl 60 paras 53 s(i)–(ix)). For these reasons I come to the conclusion that the respondent's application under O 14A is not at all suitable, and not made in good faith because if the petitioner's had any doubt on the capacity of her late husband to transact the marriage with her, certainly she would not have agreed to marry him on 5 May 1979. Equally, her mother and other members of her family certainly would not have consented to her marriage to Chew Choon Ming. Further to the above, the petitioner's husband who was also a founder and leader of a spiritual movement with large followers, she trusted him completely on his continued representation and she acted accordingly believing that her husband had divorced his first wife. It is a fact that the petitioner, after her marriage lived with her husband the late Chew Choon Ming for more than 22 years until his death on 5 June 2000 and they have two young children from the marriage as stated hereinbefore.

[23] In the case of *Leong Wee Shing v Chai Siew Yin* [2000] 5 MLJ 162, Kamalanathan Ratnam J whilst relying on s 34 of the Law Reform (Marriage and Divorce) Act 1976 when deliberating the case before him stated amongst other at p 166:

> The object of the Act was to regulate or regularise aspects of marriage and divorce of non-Muslims in the country. This was the spirit and intent of the Act. Surely therefore it cannot be the intention of Parliament that all marriages that had occurred before 1 March 1982 and not registered, ought to be held void and not recognised as valid. The serious consequences of such an interpretation would be mindboggling. For example, such an interpretation would have the effect of bastardising issues and causing disarray upon inheritance. It is to avert such catastrophe that S.34 was introduced. This has the effect of validating such marriages that were not registered before 1 March 1982. Therefore now all marriages are valid.

[24] The said decision though appealed against was applauded by the Court of Appeal which reconfirmed the said decision although there is no written decision. It therefore follows that the petitioner's marriage to the late Chew Choon Ming herein ought to be tried and oral evidence adduced before a decision is made on the

status of the marriage. encl (36) is not suitable to be disposed off under O 14A summarily. It is hereby ordered that oral evidence should be adduced in this case.

Order accordingly.

Reported by Peter Ling